

New Guidance on Reimbursement for Over-the Counter (OTC) Medicine**Client Alert - New OTC Guidelines****OVERVIEW**

Section 9003 of the "Patient Protection and Affordable Care Act" (PPACA) added Section 106(f) to the Internal Revenue Code, which revised the uniform standard of a medical expense for a tax advantaged health care account such as a Flexible Spending Account (FSA), Health Reimbursement Account (HRA), Health Savings Account (HSA) or a Archer Medical Savings Account (Archer MSA).

WHAT DOES THIS MEAN?

New restrictions were established for reimbursement of over-the-counter (OTC) medicines and drugs purchased after December 31, 2010. Expenses incurred for an OTC medicine or a drug can only be treated as a reimbursement for medical expenses if the OTC medicine or drug is accompanied by a doctor's prescription or if it is insulin. OTC medicine will no longer be eligible for reimbursement from a Flexible Spending Account (FSA), Health Reimbursement Account (HRA), Health Savings Account (HSA) and Archer Medical Savings Account (Archer MSA) without a prescription.

WHEN DOES THIS RESTRICTION BECOME EFFECTIVE?

This change is effective for all Plans on January 1, 2011, regardless of an Employer's Plan Year. However, the changes do not affect purchases of OTC medicines and drugs which were made in 2010 even if they are reimbursed after December 31, 2010.

WHAT ARE SOME OF THE OTC ITEMS THAT WILL REQUIRE A DOCTOR'S PRESCRIPTION FOR REIMBURSEMENT?

The following are examples of OTC items that will require a doctor's prescription:

- ◇ Acid Controllers
- ◇ Allergy and Sinus Treatment
- ◇ Antibiotic Products
- ◇ Anti-Diarrheals
- ◇ Anti-Gas
- ◇ Anti-Itch and Insect Bite
- ◇ Anti-Parasitic Treatment
- ◇ Baby Rash Ointments/Creams
- ◇ Cold Sore Remedies
- ◇ Cough, Cold, Flu Remedies
- ◇ Digestive Aids
- ◇ Feminine Anti-Fungal/Anti-Itch
- ◇ Hemorrhoidal Preps
- ◇ Laxatives
- ◇ Motion Sickness
- ◇ Pain Relief
- ◇ Respiratory Treatments

- ◇ Sleep Aids and Sedatives
- ◇ Stomach Remedies

WHAT ARE SOME OF THE OTC ITEMS THAT WILL NOT REQUIRE A DOCTOR'S PRESCRIPTION FOR REIMBURSEMENT?

The following are examples of OTC items that will not require a doctor's prescription:

- ◇ Insulin and Diabetic Testing Supplies
- ◇ Blood Pressure Kits
- ◇ Ostomy Products
- ◇ Contact Lens Cleaners/Solutions
- ◇ First Aid Supplies
- ◇ Splints, Supports and Braces
- ◇ Hearing Aid Batteries
- ◇ Denture products
- ◇ Orthopedic Aids
- ◇ Smoking Deterrents

CAN A DEBIT CARD CONTINUE TO BE USED FOR REIMBURSEMENT FOR AN FSA, HRA, OR HSA?

No. Debit cards can not be used for OTC medicine or drugs beginning January 1, 2011 since the expense must be substantiated by submission of a prescription. To allow time for the reprogramming of the cards the IRS will allow purchases using debit cards through January 15, 2011.

DO FLEX PLAN DOCUMENTS NEED TO BE AMENDED?

Flex Plan Sponsors have until June 30, 2011 to amend their Plans to conform to the new regulations, so long as the Amendment is effective retroactively for expenses incurred after December 31, 2010.

ADDITIONAL INFORMATION

There is additional guidance in the form of Questions and Answers from the IRS available at: <http://www.irs.gov/newsroom/article/0,,id=227308,00.html>

WHAT IS BAS'S RESPONSIBILITY?

Please contact your Account Executive if you have any questions or require further information.

If further guidance regarding OTC reimbursement is issued by IRS, BAS will provide additional updates at that time.